

REMARKS

Claims 1-4, 10-22, and 25 remain pending in the application including independent claims 1, 11, 12, 13, 16, and 25. Claims 5-9, 23-24, and 26 have been cancelled. New dependent claims 27-28 have been added. Claims 13-15 and 22 are allowed. Claim 18 is indicated as allowable.

Claims 1, 2, 3, and 10 stand rejected under 35 U.S.C. 102(e) as being anticipated by Varela (US 6701763). Claim 1 has been amended to recite that the radial location member comprises one of a plurality of teeth formed on a ring that surrounds the non-rotating component and a plurality of radial pins. Varela does not include a ring as defined in the claims. Varela also does not include a plurality of pins as defined in the claims. Thus, claims 1, 2, 3 and 10 are allowable over Varela.

Claims 1, 2, 10, 11, and 25 stand rejected under 35 U.S.C. 102(b) as being anticipated by Apple (US 1968590). Claim 1 has been amended to clarify that the torque plate includes corresponding structure that cooperates with one of the plurality of teeth and the plurality of pins to transfer rotational brake torque between the brake assembly and the non-rotating component. The torque plate 52 of Apple does not include such structure. Thus, claims 1, 2 and 10 are allowable over Apple.

Claim 11 recites that the torque plate directly engages the circular flange of the end stop of the axial location member. Figure 2 of Apple clearly shows that the torque plate 52 does not directly engage the examiner's axial location member 26. Thus, Apple cannot anticipate claim 11.

Claim 25 recites a radial location member supported by the non-rotating component where the radial location member comprises one of a plurality of teeth and a plurality of radial protrusions extending radially outwardly from the lateral axis. The examiner argues that Apple discloses a radial location member 24 with protrusions or teeth, however, these protrusions/teeth extend radially inwardly toward the lateral axis. Thus, claim 25 is not anticipated by Apple.

Claim 12 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Varela in view of Creek et al. The present application is assigned to Meritor Heavy Vehicle Braking Systems (UK) Ltd. Varela (US 67017630) is assigned to Meritor Heavy Vehicle Technology.

According to 35 U.S.C. 103(c)(1), "Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person." The claimed invention and the subject matter of Varela (applied by the examiner under 35 U.S.C. 102(e)) were owned by the same person or subject to an obligation of assignment to the same person at the time the claimed invention was made, so Varela cannot be used to preclude patentability under 35 U.S.C. 103(a). Claim 12 has been rewritten in independent form. Thus, claim 12 is now in condition for allowance.

Claims 3 and 4 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Apple. For the reasons set forth above with regard to claim 1, claims 3 and 4 are also allowable over Apple. Further, claim 3 recites that the non-rotating component comprises a trailer axle beam for a non-drive trailer axle. Apple does not disclose, suggest, or teach radial location members on a trailer axle beam as defined in the claims. Apple is directed to a front steerable axle, which is very different than a trailer axle, which is non-steerable. Apple includes a knuckle 3 that is connected to a front axle beam 20 via a kingpin 16. Further, the examiner's radial location member 24 is on the spindle portion of the knuckle. There is no disclosure that a radial location member could also be utilized on the claimed trailer axle beam instead of a knuckle. Further, the examiner has not provided any arguments indicating why one of ordinary skill in the art would be motivated to modify Apple to include a trailer axle beam as claimed. Thus, claims 3-4 are allowable over Apple.

Claims 16, 17, 19, 20, 21, and 22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Apple in view of Spindler (US 6572199). Claim 22 depends from claim 14, which has been allowed. Further, the examiner has indicated that claim 22 is allowable.

Claim 16 recites the steps of providing a non-rotating axle tube for a non-drive trailer axle, the non-rotating axle tube defining a lateral axis, and radially locating a torque plate on the non-rotating axle tube with a first location member to prevent relative rotation between the torque plate and the non-rotating axle tube. The examiner admits that Apple does not disclose a

trailer axle tube as defined in the claims. The examiner argues that Spindler discloses a spindle that can be solid or tubular and that it would have been obvious to form the spindle of Apple to be tubular to reduce the weight.

Apple does not disclose, suggest, or teach any type of structure that is similar to a trailer axle tube. The axle of Apple is a steerable front axle with a knuckle that is connected to a front axle beam via a kingpin. Steerable axles and trailer axles, which are non-steerable, are subjected to very different loading and stress conditions. The examiner's radial location member, i.e. component 24 is attached to the knuckle. There is no disclosure in Apple of attaching a radial location member to a trailer axle tube as claimed. Spindler also does not disclose or suggest such a configuration. Thus, neither reference discloses the claimed elements.

The examiner argues that the use of the non-rotating component as a trailer axle beam for a trailer axle is obvious as it is considered to be an intended use of the axle and is not patentably distinct. Applicant respectfully disagrees. There are significant structural differences between a steering knuckle and a trailer axle beam. One of ordinary skill in the art would never consider a steering knuckle and trailer axle beam as being interchangeable components. The examiner additionally argues that it would be obvious to form the spindle of Apple to be hollow or tubular in order to meet the claim limitations. This implies that the examiner considers the spindle portion of the steering knuckle to correspond to the claimed trailer axle beam. Again, one of ordinary skill in the art would never consider a steering knuckle as corresponding to the claimed trailer axle beam.

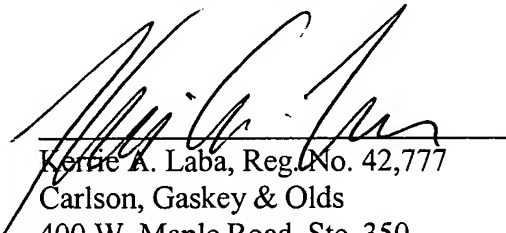
Further, regardless of whether it is appropriate to consider the spindle portion of the Apple knuckle as corresponding to the claimed trailer axle tube, the examiner is arguing that Spindler teaches to hollow out the spindle portion of the knuckle to reduce weight. Applicant disagrees. There is nothing in Spindler to suggest that it is appropriate, or desirable, to hollow out a spindle portion of a knuckle in a steer axle. Spindler is clearly directed to a non-steer axle and makes no reference to components for steering axles. Again, steering axles are subjected to very different types of loading due to high steering load inputs, and thus must be able to accommodate dry park steer loads, etc. There is nothing in either reference to suggest that a hollow spindle in a knuckle such as that of Apple would be structurally sound for a steer axle.

Thus, there is no motivation or suggestion to modify Apple in the manner proposed by the examiner.

Dependent claims 27-28 are also allowable over the recited references for the reasons set forth above with regard to claims 16 and 25. Further, these claims recite that the torque plate includes corresponding structure that receives one of the plurality of teeth and the plurality of radial protrusions. Apple does not disclose a torque plate that has such structure.

Applicant asserts that all claims are in condition for allowance and respectfully requests an indication of such. Fees for one (1) additional independent claim are paid by the attached check. Applicant believes that no additional fees are necessary, however, the Commissioner is authorized to charge Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds for any additional fees or credit the account for any overpayment.

Respectfully submitted,




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CERTIFICATE OF MAIL

I hereby certify that the enclosed Response is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 20 day of September, 2006.



Laura Combs